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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 05, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 1:24-CR-02010-MKD

Plaintiff,

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND
GRANTING IN PART AND
DENYING IN PART
DEFENDANT'S MOTION TO
SUPPRESS

v.

KELLY BALLES,

Defendant.

ECF Nos. 41, 43

On January 29, 2025, the Court held a pretrial conference in this matter.

Defendant appeared in custody and was represented by AFD Craig Webster.

AUSA Benjamin Seal represented the United States.

The Court heard argument on Defendant's Motion to Dismiss, ECF No. 43, and Motion to Suppress, ECF No. 41. For the reasons stated on the record and explained below, the Court denies the Motion to Dismiss and grants in part and denies in part the Motion to Suppress.

ORDER – 1

1 BACKGROUND

2 Defendant is charged with unlawful possession of a firearm, in violation of
3 18 U.S.C. § 922(g)(1) (Count 1), possession with intent to distribute 50 grams or
4 more of actual (pure) methamphetamine, in violation of 21 U.S.C. § 841(a)(1),
5 (b)(1)(A)(viii) (Count 2), and possession of a firearm in furtherance of a drug
6 trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3). ECF
7 No. 5.

8 DISCUSSION

9 A. Motion to Dismiss

10 Defendant moves to dismiss Count 1 (felon in possession of firearm) under
11 *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States*
12 *v. Duarte*, 101 F.4th 657 (9th Cir. 2024), *vacated pending reh'g en banc*. ECF
13 No. 43.

14 The Court previously considered facial and as-applied challenges to
15 18 U.S.C. § 922(g)(1) under *Bruen* and concluded that Section 922(g)(1) was
16 constitutional. *United States v. Aguilar-Cruz*, No. 23-CR-6024, 2024 WL 2064053
17 (E.D. Wash. May 8, 2024), ECF No. 62. Defense counsel has identified a limited
18 number of cases that have been decided since the Court issued its ruling in
19 *Aguilar-Cruz*, none of which materially change the Court's analysis or ultimate
20 conclusion on this issue. For example, the Supreme Court's June 2024 decision in

1 *United States v. Rahimi* concerned a constitutional challenge to a different offense,
2 18 U.S.C. § 922(g)(8). 602 U.S. 680 (2024). Additionally, Defendant argued at
3 the hearing that *Rahimi* is distinguishable from his circumstances because his
4 disarmament under Section 922(g)(1) amounts to a permanent ban, whereas
5 disarmament under Section 922(g)(8) is temporary. *See* ECF No. 54.

6 Accordingly, for the same reasons detailed in *Aguilar-Cruz*, the Court denies
7 Defendant's Motion to Dismiss Count 1.

8 **B. Motion to Suppress**

9 Defendant moves to suppress the evidence seized from his arrest and the
10 subsequent search of his person and vehicle on December 2, 2023. ECF No. 41.
11 He first contends that his arrest and the search of his person incident to arrest were
12 unlawful because his arrest was based on a warrant for a prior conviction affected
13 by *State v. Blake*, 481 P.3d 521 (Wash. 2021). *Id.* at 14-16. Second, he argues that
14 the search of the truck did not fall within a valid exception to the warrant
15 requirement. *Id.* at 17-33.

16 *1. Factual History of Arrest and Search*

17 At about 8:20 p.m. on December 2, 2023, police dispatch logged a report of
18 a suspicious vehicle, possibly broken down, with two men nearby attempting to
19 flag for help. ECF No. 41-1 at 1, ECF No. 41-2 at 3. Yakima County Sheriff's
20 Sergeant J. Panattoni and Deputy W. Graybael responded to find a truck parked at

1 the intersection of North White Swan Road and Branch Road. ECF No. 41-2 at 3.
2 The truck was registered to a “William Betts.” *Id.* Deputy Graybael saw
3 Defendant slumped over the steering wheel in the driver’s seat through the driver’s
4 side window. *Id.* Sgt. Panattoni roused Defendant by shining his flashlight on
5 Defendant and speaking to him. ECF No. 41-3 at 1.

6 Defendant stated he was waiting for someone to tow him to White Swan.
7 ECF No. 41-3 at 1. He said he had borrowed the truck from a friend, Rick
8 Martinez. *Id.* at 2. He said he had lost his wallet and had no ID, but identified
9 himself as “Thane Balles,” with a birthdate of March 10, 1967.¹ *Id.* at 1; ECF
10 No. 57 at 6-8. However, Sgt. Panattoni noted Defendant paused before providing
11 his birth year, and he paused again when asked to confirm his age. ECF No. 41-3
12 at 1; ECF No. 57 at 8. While attempting to verify the information Defendant had
13 provided, Sgt. Panattoni located a profile for a “Thane Balles,” with a nonlocal
14 address, who had been involved in a recent case with a “Kelly Balles.” ECF
15 No. 57 at 8. Sgt. Panattoni reviewed the profile photo for “Kelly Balles” and
16 recognized that individual as the person in the truck. *Id.* at 8-9. “Thane” is
17 Defendant’s brother. ECF No. 41-3 at 1.

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¹ This was not Defendant’s correct birthdate. *See* ECF No. 29 at 2.

1 Sgt. Panattoni saw Defendant was under bench warrant status in relation to
2 his supervision by the Washington Department of Corrections (DOC) and asked
3 dispatch to confirm the warrant. *Id.*; ECF No. 42 (Exhibit F, video recording at
4 approx. 02:00); ECF No. 57 at 9. He notified Deputy Graybael of Defendant's true
5 name, then removed Defendant from the truck and detained him in handcuffs.
6 ECF No. 41-3 at 1; ECF No. 42 (Exhibit F, video recording at approx. 02:15); ECF
7 No. 57 at 9. Sgt. Panattoni asked Defendant for his address, calling him "Kelly";
8 Defendant paused a moment before replying, "Who?" ECF No. 41-3 at 1; ECF
9 No. 42 (Exhibit F, video recording at approx. 03:40); ECF No. 57 at 10. Deputy
10 Graybael confronted Defendant about providing a false name, and Defendant
11 admitted he was, in fact, Kelly Balles. ECF No. 41-2 at 3.

12 Deputy Graybael placed Defendant under arrest based on the confirmed
13 DOC warrant and searched him incident to arrest. ECF No. 41-2 at 3; *see also*
14 ECF No. 54. During the search, Defendant stated that the truck had overheated,
15 that other individuals had helped him push it to that area, and that he had someone
16 coming to tow it. ECF No. 42 (Exhibit F, video recording at approx. 04:45).

17 Deputy Graybael found a pistol in Defendant's right jacket pocket and removed it.
18 ECF No. 41-2 at 3; ECF No. 42 (Exhibit G, video recording at approx. 07:55).
19 Deputy Graybael pointed out Defendant had denied having any weapons on him
20 before the search; Defendant replied, "I totally forgot all about it." ECF No. 41-2

1 at 3; ECF No. 42 (Exhibit G, video recording at approx. 07:55); ECF No. 41-3 at 1.
2 Deputy Graybael asked Defendant if he was sure there was nothing in the gun;
3 Defendant affirmed. ECF No. 42 (Exhibit G, video recording at approx. 08:25);
4 ECF No. 41-3 at 1. However, Deputy Graybael discovered a live bullet in the
5 chamber and additional live rounds in the magazine. ECF No. 41-2 at 3; ECF No.
6 57 at 11. Sgt. Panattoni confirmed Defendant's criminal history, which included
7 convictions for second degree assault in 1997, second degree burglary in 2012 and
8 2023, second degree theft in 1986, controlled substance
9 manufacture/deliver/possession with intent to distribute in 2004, forgery in 2004,
10 and possession of a controlled substance in 2019, in addition to Defendant's active
11 DOC supervision. ECF No. 41-3 at 2.

12 Deputy Graybael also removed a significant amount of cash, lighters, and
13 flashlights from Defendant's pockets. ECF No. 41-2 at 3; ECF No. 41-3 at 1.
14 Deputy Graybael also located a wallet, which Defendant confirmed was his,
15 despite having earlier claimed to have lost his wallet. ECF No. 42 (Exhibit G,
16 video recording at approx. 12:20); ECF No. 57 at 7, 34-35.

17 Sgt. Panattoni requested a K9 unit based on Defendant's DOC warrant
18 status, the cash found on his person, and his known involvement with drug
19 possession. ECF No. 41-3 at 2. While retrieving the VIN from the truck,
20 Sgt. Panattoni observed that the truck had been spraypainted and that the

1 dashboard VIN was obscured. *Id.* The K9 unit arrived, and the K9 sniff yielded
2 negative results. *Id.*

3 Sgt. Panattoni decided to have the truck towed due to the truck's long-
4 expired registration (as of June 2020); Defendant's arrest; Defendant's indications
5 that the truck was broken down and that a tow was on the way; that the owner did
6 not answer when called and had previously reported a vehicle theft; and that the
7 truck might impede traffic where it was currently parked. *Id.*; ECF No. 41-1 at 1
8 ("VM left for RO of Trk NN 40441"); *see also* Ex. H at 47:50 (Sgt. Panattoni
9 mentioning the expired registration).

10 Sgt. Panattoni and Deputy Graybael searched the truck and discovered
11 additional cash and a small black bag containing a clear baggie of suspected
12 methamphetamine. ECF No. 41-3 at 2; ECF No. 42 (Exhibit I, video recording at
13 approx. 00:30).

14 *2. Discussion*

15 "The government bears the burden of proving that a warrantless search or
16 seizure falls within an exception to the warrant requirement." *United States v. Job*,
17 871 F.3d 852, 860 (9th Cir. 2017) (citing *United States v. Scott*, 705 F.3d 410, 416
18 (9th Cir. 2012)). "The exclusionary rule generally applied in Fourth Amendment
19 cases requires courts to suppress any evidence obtained as a 'direct result of an
20 illegal search or seizure,' as well as 'evidence later discovered and found to be

1 derivative of an illegality, the so-called fruit of the poisonous tree.”” *United States*
2 *v. Ngumezi*, 980 F.3d 1285, 1290 (9th Cir. 2020) (quoting *Utah v. Strieff*, 579 U.S.
3 232, 237 (2016)).

4 || i. Defendant's Arrest

5 Defendant was arrested pursuant to an active bench warrant related to his
6 DOC supervision—namely, for escape from community custody. ECF No. 41-3 at
7 2. Defendant nevertheless contends that his arrest was illegal, as he was on DOC
8 supervision for a Washington drug possession conviction that was overturned by
9 *Blake*. ECF No. 41 at 14-16, 21-22.

10 Defendant raised this argument before the Washington Court of Appeals, in
11 relation to his arrest under similar circumstances in 2021. *See State v. Balles*, 556
12 P.3d 698 (Wash. Ct. App. 2024). In that case, Defendant was under DOC
13 supervision for a 2014 conviction for drug possession. *Id.* at 700. Defendant
14 failed to report as required, and a bench warrant issued. *Id.* In March 2021, about
15 one month after *Blake* was decided, law enforcement served the arrest warrant on
16 Defendant at his home, where he was found in possession of methamphetamine,
17 ammunition, a stolen firearm, and indicia of drug distribution. *Id.* at 700-01. The
18 Court of Appeals rejected his contention that the arrest warrant had been
19 invalidated by *Blake*:

20 A defendant convicted of a crime later deemed unconstitutional and invalidated on due process grounds is

1 entitled to have their conviction vacated. . . . But a
2 conviction under RCW 69.50.4013(1) is not automatically
3 vacated or invalidated. . . . Rather, it has long been
4 understood that the subject of a court order must comply
5 with the order until relieved of the obligation to do so. . . .
6 In the civil context, “[a] final judgment, . . . based upon an
7 erroneous view as to the constitutionality of a statute, is
8 valid and binding until regularly reversed or set aside.” . . .
9 The same is true in the criminal context. An offender held
10 in custody “under process issued on the final judgment . . .
11 is not entitled to his discharge . . . unless such process or
12 judgment be void. . . . When faced with a potentially invalid
13 court order, the solution is not to willfully violate
14 it. *Instead, the defendant must challenge his original
15 judgment and sentence in a timely manner and comply
16 with the terms of the order until it is otherwise overturned.*

17 *Id.* at 704 (citations omitted) (emphasis added). In other words, Defendant
18 “remained on community custody and subject to the terms of his judgment and
19 sentence until a court issued an order vacating his 2014 conviction” pursuant to
20 *Blake*, which did not occur until August 2021. *Id.*

21 Here, Defendant was on DOC supervision for a 2019 drug conviction, and
22 this conviction was not dismissed pursuant to *Blake* until December 15, 2023—i.e.,
23 about two weeks after his arrest in this matter. *See* ECF No. 13 at 12. Defendant
24 remained subject to the terms of his 2019 judgment and sentence until that
25 conviction was vacated on December 15, 2023. *See Ballez*, 556 P.3d at 704.
26 Moreover, “the exclusionary rule does not apply when the police conduct a search
27 in ‘objectively reasonable reliance’ on a warrant later held invalid.” *Davis v.*
28 *United States*, 564 U.S. 229, 238-39 (2011) (quoting *Leon v. United States*, 468

1 U.S. 897, 922 (1984)). Defendant has not established that the arresting officers'
2 reliance on the DOC warrant was not objectively reasonable, even after *Blake*.

3 Moreover, by the time of Defendant's arrest, law enforcement also had
4 sufficient probable cause to believe Defendant had committed a new offense in
5 their presence by identifying himself as his brother and providing a false date of
6 birth. An officer may conduct a lawful warrantless arrest based on "probable cause
7 to believe that an individual has committed even a very minor criminal offense in
8 his presence." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).

9 Sgt. Panattoni explained that he had asked for Defendant's birthdate specifically
10 for confirmation purposes, based on his experience that individuals without
11 identification may lie to conceal their true identities. ECF No. 57 at 7. In
12 responding to these questions, Defendant paused before stating his birth year and
13 again when asked for his current age. *Id.* at 8. Sgt. Panattoni then confirmed
14 Defendant's true identity by reviewing his profile in a local law enforcement
15 database, which included a photo of the same individual with whom Sgt. Panattoni
16 had just spoken. *Id.* at 8-9.

17 Defendant has not established that his arrest was unlawful under the DOC
18 bench warrant, and the United States has established that Defendant's arrest was
19 also lawful under the probable cause requirement for a warrantless arrest.

1 ii. Search of Defendant's Person

2 Where officers were authorized to arrest Defendant, "it was undisputedly
3 lawful to search [Defendant] as an incident of his arrest[.]" *See Strieff*, 579 U.S. at
4 240-41. The firearm discovered in Defendant's jacket pocket during the search of
5 his person was not the direct result, nor derivative of, an illegal search or seizure.
6 *See Ngumezi*, 980 F.3d at 1290.

7 iii. Search of the Truck

8 The Court finally turns to the warrantless search of Defendant's truck. The
9 United States bears the burden of establishing that this search fell within an
10 exception to the warrant requirement. *See Job*, 871 F.3d at 860. The United States
11 contends that the truck search was lawful (1) under the automobile exception or
12 (2) as a search incident to arrest. ECF No. 47 at 4-6. Because the United States
13 declined to defend the search as an inventory search, the Court does not address
14 Defendant's arguments related to the inventory search exception.

15 a. Automobile Exception

16 The automobile exception to the warrant requirement is premised on "[t]he
17 'ready mobility' of vehicles" and "'the pervasive regulation of vehicles capable of
18 traveling on the public highways.'" *Collins v. Virginia*, 584 U.S. 586, 591 (2018)
19 (quoting *California v. Carney*, 471 U.S. 386, 390, 392 (1985)). When these
20 justifications apply, police may search a vehicle without a warrant based on "facts

1 giving rise to probable cause that the vehicle contains contraband.” *Carney*, 471
2 U.S. at 392-93 (quoting *United States v. Ross*, 456 U.S. 798, 806 n.8 (1982))
3 (quotation marks omitted).

4 Defendant contends that the automobile exception should not apply because
5 he had informed the officers that the truck was inoperable. ECF No. 41 at 25.
6 Police had not confirmed that this was true, and Defendant’s assertions carry little
7 weight where he had already admitted to lying about his name and date of birth and
8 was either wrong or lying about the whereabouts of his wallet and identification,
9 whether he had any firearms on his person, and whether the pistol in his pocket
10 was loaded. In addition, Defendant had also stated he was waiting for someone to
11 come tow the truck to White Swan. Even if the truck was completely inoperable, it
12 remained mobile and, according to Defendant, would soon be moved. *Cf. United*
13 *States v. Navas*, 597 F.3d 492, 500 (2d Cir. 2010) (finding the automobile
14 exception applicable to an unhitched trailer), *cert. denied*, 562 U.S. 954 (2010).

15 The automobile exception therefore turns on whether law enforcement had
16 probable cause to search the truck for contraband. Sgt. Panattoni testified on direct
17 examination that he had a concern there might be other firearms or ammunition in
18 the truck. *See* ECF No. 54. However, the United States did not question
19 Sgt. Panattoni about the reasons underlying this concern. There may well have
20 been good reason for Sgt. Panattoni to believe that the truck contained other

1 firearm contraband, based on his training and experience, but the United States did
2 not elicit any. The United States did not inquire of this officer nor call any other
3 officer to testify about their training and experience with respect to the
4 investigation of firearm-related offenses, such as their knowledge of how such
5 offenses are commonly committed or concealed. In addition, Sgt. Panattoni
6 testified that he did not seek a search warrant for the truck at an earlier time
7 because he did not believe he had sufficient basis to suspect that the truck
8 contained evidence of a crime. ECF No. 57 at 43-44. An individual officer's
9 belief about whether probable cause exists is not determinative of whether such
10 probable cause does, in fact, exist. However, the United States had an obligation
11 to establish probable cause through some means, even if this was not through Sgt.
12 Panattoni's testimony. The United States has not met its burden in establishing
13 that the search of the truck fell within the automobile exception.

b. Search Incident to Arrest

15 The Court next considers the exception for searches incident to arrest.
16 “When an arrestee is the recent occupant of a vehicle, the arresting officer may
17 search that vehicle if the arrestee is unsecured and within reaching distance of the
18 passenger compartment, or if it is ‘reasonable to believe evidence relevant to the
19 crime of arrest might be found in the vehicle.’” *United States v. Johnson*, 913 F.3d
20 793, 801 (9th Cir. 2019) (quoting *Arizona v. Gant*, 556 U.S. 332, 343 (2009)),

1 *vacated on other grounds, Johnson v. United States*, 140 S. Ct. 440 (2019). At the
2 time officers searched the truck, Defendant had already been removed from the
3 truck, handcuffed, arrested, and placed in the back of a police vehicle. *See* ECF
4 No. 41-2 at 3-4. Therefore, for this warrant exception to have applied, officers
5 must have had reason to believe that evidence relevant to the crime of arrest might
6 be found in the vehicle. *See Johnson*, 913 F.3d at 801.

7 Police had ample probable cause to arrest Defendant for falsely identifying
8 himself to police and for unlawful possession of a firearm, in addition to the DOC
9 warrant, by the time the truck was searched. As with the automobile exception,
10 Sgt. Panattoni had a belief that there might be other firearms or ammunition in the
11 truck, but the United States did not ask him to explain the reasons for this belief.
12 Given the United States failed to elicit and establish the basis for the belief, the
13 United States also failed to meet its burden in establishing that the search of the
14 truck was a valid search incident to arrest.

15 Without an adequate showing that a warrant exception applies, the Court
16 cannot conclude that the warrantless vehicle search was lawful.

17 iv. The Exclusionary Rule

18 The exclusionary rule requires suppression of evidence that directly results
19 or derives from an unlawful search. *Ngumezi*, 980 F.3d at 1290. On this point, the
20 United States also bears “the burden to show that the evidence is not the fruit of the

1 poisonous tree[.]” *Id.* at 1291 (quoting *United States v. Twilley*, 222 F.3d 1092,
2 1097 (9th Cir. 2000)) (quotation marks omitted).

3 Here, the United States has made no further arguments against suppression,
4 such as attenuation or inevitable discovery. *See id.* The Court concludes that
5 suppression of the evidence discovered in the search of the truck is required.

6 CONCLUSION

7 The Court denies Defendant’s Motion to Dismiss for the reasons set forth in
8 *Aguilar-Cruz*, 2024 WL 2064053, given the lack of intervening case law from a
9 court of binding authority. The Court denies Defendant’s Motion to Suppress with
10 regard to the challenges to his arrest and the search of his person, but grants the
11 motion and excludes evidence obtained from the December 2, 2023, search of the
12 truck.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Defendant’s Motion to Dismiss Count 1 of Superseding Indictment,
15 **ECF No. 43**, is **DENIED**.

16 2. Defendant’s Motion to Suppress, **ECF No. 41**, is **DENIED in part** as
17 to Defendant’s arrest and the search of his person, and **GRANTED in part** as to
18 evidence obtained during the search of the truck.

19 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order
20 and provide copies to all counsel.

1 **DATED** February 5, 2025.

2 *s/Mary K. Dimke*
3 MARY K. DIMKE
4 UNITED STATES DISTRICT JUDGE